

REPUBLIC OF SOUTH AFRICA

**DRAFT EMPLOYMENT TAX
INCENTIVE BILL**

*(As introduced in the National Assembly (proposed section 77))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B –2013]

BILL

To provide for an employment tax incentive in the form of an amount by which employees' tax may be reduced; and to provide for matters connected therewith.

PREAMBLE

SINCE the unemployment rate in the Republic is of concern to government;

AND SINCE government recognises the need to share the costs of expanding job opportunities with the private sector;

AND SINCE government wishes to support employment growth by focusing on labour market activation, especially in relation to young work seekers;

AND SINCE government is desirous of instituting an employment tax incentive,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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SCHEDULE

Definitions

1. (1) In this Act, unless the context indicates otherwise—

"associated institution", in relation to an employer—

- (a) where the employer is a company, means any other company which is associated with that employer by reason of the fact that both companies are managed or controlled directly or indirectly by substantially the same persons; or
- (b) where the employer is not a company, means any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member;

"employee" means a person—

- (a) who works for another person; and
- (b) who receives, or is entitled to receive remuneration,

but does not include an independent contractor;

"employees' tax" means the amount deducted or withheld that must be paid over to the Commissioner for the South African Revenue Service by virtue of paragraph 2(1) of the Fourth Schedule to the Income Tax Act;

"Income Tax Act" means the Income Tax Act, 1962 (Act No. 58 of 1962);

"Labour Relations Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995).

"monthly remuneration"—

- (a) where an employer employs the qualifying employee for a month, means the amount paid or payable in respect of that month; or

(b) where an employer employs the qualifying employee for part of a month, means the amount that would have been payable in respect of that month had that employer employed that employee for the entire month;

"qualifying employee" means an employee contemplated in section 6;

"special economic zone" means a special economic zone designated by the Minister of Trade and Industry pursuant to an Act of Parliament;

"Tax Administration Act" means the Tax Administration Act, 2011 (Act No. 28 of 2011).

(2) For the purposes of the definition of "monthly remuneration" in subsection (1), "remuneration" has the meaning ascribed to it in paragraph (1) of the Fourth Schedule to the Income Tax Act.

Part I

Employment tax incentive

Institution of employment tax incentive

2. (1) An incentive, called the employment tax incentive, in order to encourage employment creation is hereby instituted.

(2) If an employer is eligible to receive the employment tax incentive in respect of a qualifying employee in respect of a month, that employer may reduce the employees' tax payable by that employer in an amount determined in terms of section 7, unless section 8 applies.

PART II***Eligible employers and qualifying employees*****Eligible employers**

3. An employer is eligible to receive the employment tax incentive if the employer—
- (a) is—
- (i) required to apply to be registered for the purposes of employees' tax by virtue of paragraph 15 of the Fourth Schedule to the Income Tax Act; and
 - (ii) registered for the purposes of the withholding and payment of employees' tax; and
- (b) is not—
- (i) the government of the Republic in the national, provincial or local sphere;
 - (ii) a public entity that is listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) other than those public entities that the Minister of Finance may designate by notice in the *Gazette* on such conditions as the Minister of Finance may prescribe by regulation;
 - (iii) a municipal entity defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and
- (c) is not disqualified from receiving the incentive due to—
- (i) non-compliance with the requirements in respect of minimum remuneration by virtue of section 4;

- (ii) the displacement of an employee by virtue of section 5; or
- (iii) not meeting such conditions as the Minister of Finance, after consultation with the Minister of Labour, may prescribe by regulation, including conditions based on the classification of trade in the most recent Standard Industrial Classification Code issued by Statistics South Africa.

Compliance with determinations and agreements and minimum remuneration

4. (1) An employer who is subject to—

- (a) a sector determination issued by the Minister of Labour in terms section 51 of the Basic Conditions of Employment Act, 1997 (Act No.75 of 1997); or
- (b) a bargaining counsel agreement extended by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995 (Act No. 66 of 1995),

does not qualify to receive a tax incentive in respect of an employee if that employer does not remunerate that employee in accordance with the minimum wage in terms of that determination or agreement.

(2) Where an employer is not subject to any sector determination contemplated in subsection (1)(a) or any bargaining counsel agreement contemplated in subsection (1)(b), that employer does not qualify to receive a tax incentive in respect of an employee if that employer does not pay remuneration to that employee in an amount of at least R 2000 per month.

Disqualification in respect of displacement

5. (1) An employer does not qualify to receive the employment tax incentive and is deemed to have displaced an employee if a finding is made as described in subsection (2) that—
- (a) the employer unfairly dismissed any employee employed by that employer; and
 - (b) the dismissal referred to in paragraph (a) constitutes an automatic unfair dismissal in terms of section 187(f) of the Labour Relations Act due to the employer having unfairly discriminated against the employee, directly or indirectly, on any arbitrary ground in terms of in section 187(f) of that Act, if that dismissal was made for the purpose of enabling the employer to comply with the criteria for the employer to receive the incentive in terms of this Act.
- (2) The finding in subsection (1) must be made by—
- (a) the Commission for Conciliation, Mediation and Arbitration established in terms of section 112(1) of the Labour Relations Act;
 - (b) a council or private agency accredited in terms of section 127(1) of the Labour Relations Act; or
 - (c) any competent court.

- (3) Where a finding is made as described in subsection (1) the employer—
- (a) is not eligible to receive the employment tax incentive; and
 - (b) must pay a penalty to the South African Revenue Service in an amount equal to 150 per cent of the total amount of the employment tax incentive that the employer received, determined in terms of section 7, during the 12 month period preceding the finding.

Qualifying employees

- 6.** (1) An employee is a qualifying employee if the employee—
- (a) is in possession of an identity card referred to in section 14 of the Identification Act, 1997 (Act No. 68 of 1997), issued to that employee after application for the card in terms of section 15 of that Act;
 - (b)
 - (i) is not less than 19 years old and not more than 29 years old;
 - (ii) is employed by an employer operating through a fixed place of business located within a special economic zone designated by notice by the Minister of Finance in the *Gazette* and that employee renders services to that employer mainly within that special economic zone; or
 - (iii) is employed by an employer in an industry designated by the Minister of Finance by notice in the *Gazette*;

- (c) in relation to the employer, is not a connected person as defined in section 1 of the Income Tax Act;
- (d) is not a domestic worker as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); and
- (e) in relation to the employer, was not an employee of the employer or an associated institution prior to 1 October 2013.

(2) An employee is not a qualifying employee if the monthly remuneration of that employee exceeds an amount of R6 000.

Part III

Determining amount of employment tax incentive

Determining amount of employment tax incentive

7. (1) During each month that an employer employs a qualifying employee, the amount of the employment tax incentive available to that employer is the sum of the amounts determined in respect of each qualifying employee of that employer stipulated in subsections (2) and (3) and section 9.

(2) During each month for the first period of 12 months that an employer employs a qualifying employee, the amount of the employment tax incentive in respect of that qualifying employee, if the monthly remuneration of the employee is—

- (a) R2 000 or less, is an amount equal to 50 per cent of the monthly remuneration of the employee;

- (b) more than R2 000 but less than R4 001, is an amount of R1 000;
- (c) more than R4 000 but less than R6 001, is an amount determined in accordance with the following formula:

$$X = A - (B \times (C - D))$$

in which formula—

- (i) "X" represents the amount of the monthly employment tax incentive that must be determined;
 - (ii) "A" represents the amount of R1 000;
 - (iii) "B" represents the number 0,5;
 - (iv) "C" represents the amount of the monthly remuneration of the employee;
 - and
 - (v) "D" represents the amount of R4 000; or
- (d) more than R6 000, is an amount of nil.

(3) During each of the 12 months immediately following the first period of 12 months that the same employer employs the qualifying employee, the amount of the employment tax incentive in respect of that qualifying employee, if the monthly remuneration of the employee is—

- (a) R2 000 or less, is an amount equal to 25 per cent of the monthly remuneration of the employee;
- (b) more than R2 000 but less than R4 001, is an amount of R500;
- (c) more than R4 000 but less than R6 001, is an amount determined in accordance with the following formula:

$$X = A - (B \times (C - D))$$

in which formula—

- (i) "X" represents the amount of the monthly employment tax incentive that must be determined;
 - (ii) "A" represents the amount of R500;
 - (iii) "B" represents the number 0,25;
 - (iv) "C" represents the amount of the monthly remuneration of the employee; and
 - (v) "D" represents the amount of R4000; or
- (d) more than R6 000, is an amount of nil.

(4) If a qualifying employee was previously employed by an associated institution in relation to the employer that employs the qualifying employee, the number of months that the qualifying employee was employed by the associated institution must be taken into account by that employer for the purposes of this section as if that employee had already been employed by that employer for that number of months.

(5) If an employer employs the qualifying employee only for a part of a month, the employment tax incentive to be received in respect of that month in respect of that qualifying employee must be an amount that bears to the total amount calculated in terms of subsection (2) or (3) the same ratio as the number of working days that the qualifying employee was employed by that employer in that month bears to the total number of working days in that month.

(6) For the purposes of this section, "working day" means any day which an employee of the employer would be required to work in the ordinary course of his or her employment.

Unavailability of employment tax incentive for reducing employees' tax

8. (1) An employer may not reduce the employees' tax payable by that employer in respect of a month by the amount of the employment tax incentive available to that employer in that month if, on the last day of that month, the employer—

(a) has failed to submit any return as defined in section 1 of the Tax Administration Act and on the basis required by section 25 of that Act; or

(b) has any tax debt as defined in section 1 of the Tax Administration Act that is outstanding, but excluding a tax debt—

(i) in respect of which an agreement has been entered into contemplated in section 167 or 204 of the Tax Administration Act;

(ii) that has been suspended in terms of section 164 of the Tax Administration Act; or

(iii) that does not exceed the amount referred to in section 169(4) of the Tax Administration Act.

Roll-over of amounts

9. (1) Subject to subsection (3) and section 10(2), if in any month the amount of the employment tax incentive available to an employer exceeds the amount payable by the employer in respect of employees' tax, the amount of the employment tax incentive by which the employees' tax may be reduced in the succeeding month

must be increased by adding the amount of that excess to the amount of the employment tax incentive that is available in that succeeding month.

(2) If, by virtue of section 8, an employer may not reduce employees' tax in the amount of the employment tax incentive available to that employer, the sum of the amounts by which the employer would have been entitled to reduce employees' tax payable by that employer if the employer had not been subject to section 8 must be treated as an excess referred to in subsection (1) in the first month that the employer is not subject to section 8.

(3) The amount by which the employment tax incentive exceeds the employees' tax contemplated in subsections (1) and (2), on the first day of the month following the end of the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act, may not exceed R6 000 in respect of each qualifying employee employed by the employer on that date.

Reimbursement

10. (1) At the end of the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act, an amount equal to the excess referred to in section 9(1) must be claimed from the South African Revenue Service in a form and manner and at the time and place prescribed by the Commissioner for the South African Revenue Service.

(2) An amount equal to the excess referred to in section 9(1) must be

paid to the employer from the National Revenue Fund and be treated as a drawback from revenue charged to the National Revenue Fund.

(3) Where the excess is paid to an employer in terms of subsection (1), the amount of any excess must be deemed to be nil in the month following the month during which that excess is paid.

(4) The amount of the excess referred to in subsection (1) payable to an employer may not be paid to that employer if the employer—

- (a) has failed to submit any return contemplated in section 8(1)(a); or
- (b) has any tax debt contemplated in section 8(1)(b).

Part IV

Miscellaneous

Cessation of employment tax incentive

11. An employer may not reduce employees' tax payable by that employer in any amount of the employment tax incentive after 1 January 2017.

Amendment of laws

12. The laws specified in the second column of the Schedule are hereby amended to the extent set out in the third column of that Schedule.

Short title and commencement

- 13.** (1) This Act is called the Employment Tax Incentive Act, 2013.
- (2) Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11 and 12 come into operation on 1 January 2014.
- (3) Section 10 comes into operation on a date determined by the Minister of Finance in the *Gazette*.

SCHEDULE
(Section 14)

No. and year	Short title	Extent of amendment
Act No. 58 of 1962	Income Tax Act, 1962	<p>Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution in subparagraph (1) for the words following item (b) of the following words:</p> <p style="padding-left: 40px;">"(whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount, or, where that amount constitutes any lump sum contemplated in paragraph 2(1)(b) of the Second Schedule, deduct from the employees benefit or minimum individual reserve as contemplated in that paragraph, by way of employees' tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee's spouse, in respect of such liability of that spouse, and shall, <u>subject to the Employment Tax Incentive Act, 2013</u>, pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which that person ceased to be an employer, or in either case within such further period as the Commissioner may approve."; and</p> <p>(b) by the insertion after subparagraph (2) of the following subparagraph:</p> <p style="padding-left: 40px;"><u>"(2A) An employer may deduct the amount of the employment tax incentive for which the employer is eligible in terms of the Employment Tax Incentive Act, 2013, from the amount of the employees' tax to be paid to the Commissioner by that employer in terms of subparagraph (1), unless section 8 of that Act applies."</u></p>

No. and year	Short title	Extent of amendment
Act No. 34 of 1997	South African Revenue Service Act, 1997	Schedule 1 to the South African Revenue Service Act, 1997, is hereby amended by the insertion after item 19 of the following item: "19A. <u>Employment Tax Incentive Act, 2013</u> ".